

In the  
**Supreme Court of Ohio**

LAWRENCE BURFITT,	:	
STATE OF OHIO EX. RELATOR	:	Case No. 2020-0136
	:	
Relator,	:	
	:	Original Action in Mandamus
v.	:	
	:	
SONRISA SEHLMAYER	:	
	:	
Respondent.	:	

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**RESPONDENT'S MERIT BRIEF**

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Toledo Correctional Institution  
P.O. Box 80033  
Toledo, Ohio 43608

*Relator, Pro se*

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## I. STATEMENT OF THE CASE AND FACTS

On August 22, 2019, Relator Lawrence Burfitt (Relator), an inmate currently incarcerated at Toledo Correctional Institution (TCI), submitted a public records request to Respondent Sonrisa Sehlmeyer (Respondent), the public records custodian of TCI. (Respondent's Exh. A; Respondent's Exh. E, ¶ 6). More specifically, Relator's request—submitted via internal kite procedure—stated in full: “I would like to make a public records request pursuant to: R.C. 149.43 for the following: first, second, third, and fourth shift roster.” *See id.*

Subsequently, on August 26, 2019, Respondent denied the requested records via a written letter addressed to Relator. (Respondent's Exh. C; Respondent's Exh. E, ¶ 7). In doing so, Respondent declared the information requested was not a public record pursuant to the security records exemption under the Ohio Revised Code. *See id.* Respondent also provided additional support for denying the public records request by citing Ohio Administrative Code Section 5120-9-49. (Appendix E; Respondent's Exh. E, ¶ 7).

Thereafter, on January 27, 2020, Relator brought this original action in mandamus seeking \$1,000 in statutory damages plus court costs. (Compl. p. 4). As part of his complaint, Relator stated that a shift roster is “nothing more than documents revealing a [sic] assigned post of officers which is considered a public record pursuant to R.C. 149.011(G).” *Id.* at 2. On February 19, 2020, Respondent moved to dismiss Relator's action, and on May 13, 2020, this Court granted an alternative writ setting a briefing schedule and the submission of evidence. *See docket.*

On May 28, 2020, Relator submitted his merit brief. (*See docket*; Relator's Brief, p. 1). Relator put forth no argument or supporting evidence to show that his August 22, 2019, request for shift rosters are public records under the Ohio Public Records Act. (Relator's Brief, p. 1-2). Instead, Relator's brief raised only two arguments: (1) that Respondent failed to comply with his

request for shift rosters; and (2) that Respondent failed to establish any grounds to support that his requested records are infrastructure records. (Relator's Brief, p. 1). Relator further declared Respondent failed to provide him any explanation for the denial in writing. *Id.* at p. 2.

## **II. ARGUMENT**

### **A. Legal Standard: Public Records Mandamus Actions**

It is well-established that the Public Records Act “is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records.” *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376, 1996-Ohio-214, 662 N.E.2d 334 (1996). Yet to prevail on a claim for mandamus relief in a public-records case, a Relator must establish a clear legal right to the requested relief and a corresponding clear legal duty on the part of the Respondent to provide that relief. *See, e.g., State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 22-24. Accordingly, a Relator must prove that he or she is entitled to the writ by clear and convincing evidence. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 16.

However, it is equally well-settled that exceptions to disclosure under the Ohio Public Records Act are strictly construed against a public office, and the office has the burden to establish the applicability of an exception. *See, e.g., State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10. Thus, a public records custodian does not meet this burden if it has not proven that the requested records fall squarely within the stated exception. *See id.*

**B. Respondent Properly Denied Relator’s Request for TCI’s Shift Rosters as the Records Requested are “Security Records” Exempt from Disclosure Under the Ohio Public Records Act.**

Relator is not entitled to TCI’s shift rosters as the records requested are “security records” under R.C. 149.433. In *State ex rel. Plunderbund Media, L.L.C. v. Born*, this Court held that agencies of the state cannot simply label a document as a “security record” without showing that it falls within the definition of R.C. 149.433. 141 Ohio St.3d 422, 2014-Ohio-3679, 25 N.E.3d 988, ¶ 29. Under that section, a “security record” is defined as:

- (1) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;
- (2) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:
  - (a) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;
  - (b) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;
  - (c) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.
- (3) An emergency management plan adopted pursuant to section 3313.536 of the Revised Code.

Contrary to the oversimplified argument put forth by Relator, a prison’s shift roster does much more than simply reveal the assigned post of a corrections officer. (Compl. p. 2; Respondent’s Exh. E, ¶ 8). Yes, the general purpose of a shift roster is to systematically organize and assign corrections officers to their posts within a prison. (Respondent’s Exh. D). However,

by revealing the name, time, and location of every corrections officer within TCI—including those both on and off duty—a shift roster undoubtedly becomes a security record that satisfies the criteria of R.C. 149.433(A)(1). *See id.*

A shift roster protects the prison from attack, interference, or sabotage in several ways. First, a shift roster displays which corrections officers are or are not firearms certified, and thus, assigned to certain positions. (Respondent’s Exh. D). Knowledge of this information, even at the most basic level, reveals which officers are more vulnerable than others and weakens the defense of a prison. *See id.* Second, a shift roster in the hands of an inmate with nefarious means immediately jeopardizes the safety of the institution. Knowing the precise location of an officer allows an inmate to track their whereabouts and monitor their days off work. *See id.* Therefore, an inmate looking to target a particular officer need not look any further than the shift roster before him. And third, the roster discloses how many officers are on site as well as those assigned in a relief capacity. *See id.* Knowing which officers are to be called upon (as well as their response location) impedes the prison’s ability to thwart attacks, maintain order, and protect the prison, its staff, and its inmates.

Next, a shift roster equally satisfies the language of R.C. 149.433(A)(2)(a). In addition to its post assignments, a shift roster also includes the institution’s response plans (i.e. lines of defense) in the event of an emergency. (Respondent’s Exh. D). An “act of terrorism” within the meaning of the statute has the same definition as in R.C. 2909.21, and includes specified offenses, including felony offenses of violence, intended to intimidate or coerce, influence the policy of government, or affect the conduct of government. R.C. 149.433(A); R.C. 2909.21(A), (M); R.C. 2901.01(A)(9). To this end, a shift roster discloses the prison’s strategy to respond to internal attacks. This includes felony offenses of violence, such as murder or assault, that could be (and

with mild frequency have been) exercised within the prison on fellow inmates, officers, or staff. (Respondent's Exh. D). Disclosing even one shift roster—let alone four consecutive rosters—divulges which locations are vulnerable when disruption occurs as responders flock to an incident. *See id.* Therefore, as arguably the most sensitive of all records within the entirety of the Ohio prison system, shift rosters are most certainly “security records” as defined in R.C. 149.433 and are exempt from disclosure.

**C. Respondent Properly Denied Relator's Request for TCI's Shift Rosters as the Records Requested are “Infrastructure Records” Exempt from Disclosure Under the Ohio Public Records Act.**

Relator is likewise not entitled to TCI's shift rosters as the records requested are “infrastructure records” under R.C. 149.433(A). Under the statute, an “infrastructure record” is “any record that discloses the configuration of critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building.” The definition also includes “a risk assessment of infrastructure performed by a state or local law enforcement agency at the request of a property owner or manager.” *Id.* Importantly, an infrastructure record “does not mean a simple floor plan that discloses only the spatial relationship of components of the building.” *Id.*

In *State ex rel. Rogers v. Dep't of Rehab. & Corr.*, this Court held a Relator was entitled to security-camera footage where the Respondent (ODRC) failed to show the video fell within the “infrastructure records” exemption of the Ohio Public Records Act. 155 Ohio St. 3d 545, 548-49, 2018-Ohio-5111. In coming to its decision, this Court highlighted that the video in question did not disclose the location of any other video camera, and—most importantly—did not reveal “the location of any fire or other alarms, *correctional-officer posts*, or the configuration of any other

critical system.” *Id.* at 549 (emphasis added). Accordingly, this Court expressly recognized that the video’s failure to reveal the posts of correctional officers guided its determination that the video was not exempt from disclosure. *See id.*

Here, however, shift rosters do reveal “correctional-officer posts”, as expressly indicated by the Relator’s complaint. (Compl. p. 2; Respondent’s Exh. D). Thus, at the very minimum, based upon the language in *Rogers*, a shift roster record—in and of itself—is sufficiently excluded under the infrastructure record exemption. Accordingly, Relator’s continual attempts to oversimplify a shift roster (as solely a descriptor of post locations) actually works against him following *Rogers*. Yet as indicated above, shift rosters are critical penological records that do more than reveal the assigned post of an officer. By revealing the names, times, response plans, and exact locations of every officer, the record also discloses the configuration of the prison’s critical systems and security measures necessary to keep the prison safe. Therefore, because shift rosters constitute an “infrastructure record” pursuant to R.C. 149.433(A), Respondent respectfully requests this Court to dismiss Relator’s original action in mandamus.

#### **D. Relator is Not Entitled to Statutory Damages.**

Assuming *in arguendo* that Relator’s request for “shift rosters” are neither an “infrastructure record” nor a “security record”, Relator has failed to show he hand delivered, electronically submitted, or sent his request by certified mail to Respondent. Under R.C. 149.43(C)(2),

If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the

person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

Here, Relator has failed to produce supporting evidence that he complied with the requirements for statutory damages. *See, e.g., State ex rel. Martin*, 2019-Ohio-1827 at ¶ 9 (“Because Martin has produced no evidence that his written request was delivered to Greene by hand or certified mail, we deny the request for statutory damages.”); *State ex rel. Penland v. Ohio Dep’t of Rehab. & Corr.*, 2019-Ohio-4130, ¶16, 2019 Ohio LEXIS 2063, \*8, 2019 WL 5050469 (“Because no evidence suggests that Penland delivered his request to Sehlmeyer by hand or by certified mail, we deny the request for statutory damages.”). As part of Relator’s Supplemental Complaint, Relator generally states he “hand delivered” his public records request to Respondent. However, Relator has produced no such evidence, in a clear and convincing manner, to verify this allegation. On the contrary, Respondent’s supporting evidence shows Relator’s request was submitted via kite and not by hand delivery. (Respondent’s Exh. A; Exh. E ¶ 6). Therefore, Relator is not entitled to his requested relief of statutory damages.

### **III. CONCLUSION**

For the foregoing reasons, Respondent respectfully requests this Court to dismiss Relator’s Complaint for a writ of mandamus, assess costs to Relator, and award any other relief deemed necessary and just by this Court.

Respectfully submitted,

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Ohio Attorney General

/s/ Zachary S. O’Driscoll  
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*Counsel for Respondent Sonrisa Sehlmeyer*

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Respondent's Merit Brief* was filed via electronic transmission on June 17, 2020, and was sent by regular, first-class mail to:<sup>1</sup>

LAWRENCE R. BURFITT  
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Toledo, Ohio 43608

*Relator, pro se*

/s/ Zachary S. O'Driscoll  
ZACHARY S. O'DRISCOLL (0096870)  
Assistant Attorney General

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<sup>1</sup> Respondent asks this Court to note that service may be delayed a few days due to the recent protests in Downtown Columbus. The 150 E. Gay Street Office of the Ohio Attorney General has been damaged/vandalized and out of an abundance of caution for staff, security has currently ordered employees to work remotely leading to a delay in mail service.

## ORC Ann. 149.43

Current with Legislation passed by the 133rd General Assembly and filed with the Secretary of State through file 30.

***Page's Ohio Revised Code Annotated > Title 1: State Government (Chs. 101 — 195) > Chapter 149: Documents, Reports, and Records (§§ 149.01 — 149.99) > Records Commissions (§§ 149.38 — 149.45)***

### **§ 149.43 Availability of public records.**

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**(A)**As used in this section:

**(1)**“Public record” means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. “Public record” does not mean any of the following:

- (a)**Medical records;
- (b)**Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;
- (c)**Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;
- (d)**Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;
- (e)**Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;
- (f)**Records specified in division (A) of section 3107.52 of the Revised Code;
- (g)**Trial preparation records;
- (h)**Confidential law enforcement investigatory records;
- (i)**Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;
- (j)**DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;
- (k)**Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;
- (l)**Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;
- (m)**Intellectual property records;
- (n)**Donor profile records;
- (o)**Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

- (p) Designated public service worker residential and familial information;
- (q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;
- (t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;
- (u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;
- (v) Records the release of which is prohibited by state or federal law;
- (w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;
- (x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;
- (y) Records listed in section 5101.29 of the Revised Code;
- (z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;
- (aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;
- (bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;
- (cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;
- (dd) Personal information, as defined in section 149.45 of the Revised Code;
- (ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record, and records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

**(ff)**Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

**(gg)**The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

**(hh)**Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

**(ii)**Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

**(i)**The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

**(ii)**The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

**(jj)**Restricted portions of a body-worn camera or dashboard camera recording;

**(kk)**In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

**(ll)**Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

**(mm)**Telephone numbers for a victim, as defined in section 2930.01 of the Revised Code, a witness to a crime, or a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under section 3107.083 of the Revised Code, a denial of release form filed pursuant to section 3107.46 of the Revised Code, or any record that is exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

**(2)**"Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

- (a)The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;
- (b)Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;
- (c)Specific confidential investigatory techniques or procedures or specific investigatory work product;
- (d)Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3)“Medical record” means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4)“Trial preparation record” means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5)“Intellectual property record” means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6)“Donor profile record” means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7)“Designated public service worker” means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, judge, magistrate, or federal law enforcement officer.

(8)“Designated public service worker residential and familial information” means any information that discloses any of the following about a designated public service worker:

- (a)The address of the actual personal residence of a designated public service worker, except for the following information:
  - (i)The address of the actual personal residence of a prosecuting attorney or judge; and
  - (ii)The state or political subdivision in which a designated public service worker resides.
- (b)Information compiled from referral to or participation in an employee assistance program;
- (c)The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;
- (d)The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;
- (e)The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;
- (f)The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card

number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

**(15)**“Body-worn camera” means a visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer’s duties.

**(16)**“Dashboard camera” means a visual and audio recording device mounted on a peace officer’s vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer’s duties.

**(17)**“Restricted portions of a body-worn camera or dashboard camera recording” means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

- (a)**The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency’s records or the content of the recording;
- (b)**The death of a person or a deceased person’s body, unless the death was caused by a peace officer or, subject to division (H)(1) of this section, the consent of the decedent’s executor or administrator has been obtained;
- (c)**The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent’s executor or administrator has been obtained;
- (d)**Grievous bodily harm, unless the injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person’s guardian has been obtained;
- (e)**An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person’s guardian has been obtained;
- (f)**Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person’s guardian has been obtained;
- (g)**An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person’s guardian has been obtained;
- (h)**A person’s nude body, unless, subject to division (H)(1) of this section, the person’s consent has been obtained;
- (i)**Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;
- (j)**Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;
- (k)**Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person’s identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;
- (l)**Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;
- (m)**Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;
- (n)**A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;

- (o) A conversation between a peace officer and a member of the public that does not concern law enforcement activities;
- (p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;
- (q) Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

As used in division (A)(17) of this section:

“Grievous bodily harm” has the same meaning as in section 5924.120 of the Revised Code.

“Health care facility” has the same meaning as in section 1337.11 of the Revised Code.

“Protected health information” has the same meaning as in 45 C.F.R. 160.103.

“Law enforcement agency” has the same meaning as in section 2925.61 of the Revised Code.

“Personal information” means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

“Sex offense” has the same meaning as in section 2907.10 of the Revised Code.

“Firefighter,” “paramedic,” and “first responder” have the same meanings as in section 4765.01 of the Revised Code.

**(B)**

(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office’s or person’s duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use, and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person requesting the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person requesting the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by that person. Nothing in this section requires a public office or person responsible for the public record to allow the person requesting a copy of the public record to make the copies of the public record.

(7)

(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

**(iii)**For purposes of division (B)(7) of this section, “commercial” shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

**(8)**A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge’s successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

**(9)**

**(a)**Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker’s spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker’s spouse, former spouse, or child. The request shall include the journalist’s name and title and the name and address of the journalist’s employer and shall state that disclosure of the information sought would be in the public interest.

**(b)**Division (B)(9)(a) of this section also applies to journalist requests for:

**(i)**Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

**(ii)**Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

**(c)**As used in division (B)(9) of this section, “journalist” means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

**(10)**Upon a request made by a victim, victim’s attorney, or victim’s representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(gg) of this section to the victim, victim’s attorney, or victim’s representative.

**(C)**

**(1)**If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

**(a)**File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

**(b)**Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney’s fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio

Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)

(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the

public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

**(c)**The court shall not award attorney's fees to the relator if the court determines both of the following:

- (i)**That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;
- (ii)**That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

**(4)**All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

**(a)**The fees shall be construed as remedial and not punitive.

**(b)**The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

**(c)**Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

**(d)**The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

**(5)**If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

**(D)**Chapter 1347. of the Revised Code does not limit the provisions of this section.

**(E)**

**(1)**To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

**(2)**All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time

before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

**(F)**

**(1)** The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

**(2)** As used in division (F)(1) of this section:

**(a)** “Actual cost” means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

**(b)** “Bulk commercial special extraction request” means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. “Bulk commercial special extraction request” does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

**(c)** “Commercial” means profit-seeking production, buying, or selling of any good, service, or other product.

**(d)** “Special extraction costs” means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. “Special extraction costs” include any charges paid to a public agency for computer or records services.

**(3)** For purposes of divisions (F)(1) and (2) of this section, “surveys, marketing, solicitation, or resale for commercial purposes” shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

**(G)** A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

**(H)**

**(1)** Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:

**(a)** The recording will not be used in connection with any probable or pending criminal proceedings;

**(b)** The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

**(2)** If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.

## History

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130 v 155 (Eff 9-27-63); 138 v S 62 (Eff 1-18-80); 140 v H 84 (Eff 3-19-85); 141 v H 238 (Eff 7-1-85); 141 v H 319 (Eff 3-24-86); 142 v S 275 (Eff 10-15-87); 145 v H 152 (Eff 7-1-93); 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 353 (Eff 9-17-96); 146 v H 419 (Eff 9-18-96); 146 v S 277, § 1 (Eff 3-31-97); 146 v H 438, § 3 (Eff 7-1-97); 146 v S 277, § 6 (Eff 7-1-97); 147 v H 352 (Eff 1-1-98); 147 v H 421 (Eff 5-6-98); 148 v S 55 (Eff 10-26-99); 148 v S 78 (Eff 12-16-99); 148 v H 471 (Eff 7-1-2000); 148 v H 539 (Eff 6-21-2000); 148 v H 640 (Eff 9-14-2000); 148 v H 448 (Eff 10-5-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 196 (Eff 11-20-2001); 149 v S 180 (Eff 4-9-2003); 149 v S 258. Eff 4-9-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v H 6, § 1, eff. 2-12-04; 150 v H 431, § 1, eff. 7-1-05; 150 v H 303, § 1, eff. 10-29-05; 151 v H 141, § 1, eff. 3-30-07; 151 v H 9, § 1, eff. 9-29-07; 152 v H 214, § 1, eff. 5-14-08; 152 v S 248, § 1, eff. 4-7-09; 153 v H 1, § 101.01, eff. 10-16-09; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2011 HB 64, § 1, eff. Oct. 17, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 314, § 1, eff. Sept. 28, 2012; 2013 HB 59, § 101.01, eff. Sept. 29, 2013; 2014 hb663, § 3, effective March 20, 2015; 2014 hb663, § 1, effective March 23, 2015; 2015 hb64, § 101.01, effective September 29, 2015; 2016 hb359, § 1, effective September 8, 2016; 2016 sb321, § 1, effective September 28, 2016; 2016 hb317, § 1, effective September 28, 2016; 2016 hb471, § 1, effective December 19, 2016; 2018 hb8, § 1, effective September 28, 2018; 2018 hb312, § 1, effective November 2, 2018; 2018 hb34, § 1, effective November 2, 2018; 2018 sb201, § 1, effective March 22, 2019; 2018 sb229, § 1, effective March 22, 2019; 2018 sb214, § 1, effective April 5, 2019; 2018 hb341, § 1, effective April 5, 2019; 2018 hb139, § 1, effective April 8, 2019; 2018 hb425, § 1, effective April 8, 2019; 2019 hb166, § 101.01, effective October 17, 2019.

## ORC Ann. 149.433

Current with Legislation passed by the 133rd General Assembly and filed with the Secretary of State through file 30.

*Page's Ohio Revised Code Annotated > Title 1: State Government (Chs. 101 — 195) > Chapter 149: Documents, Reports, and Records (§§ 149.01 — 149.99) > Records Commissions (§§ 149.38 — 149.45)*

### § 149.433 Exemption of security and infrastructure records.

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**(A)** As used in this section:

“Act of terrorism” has the same meaning as in section 2909.21 of the Revised Code.

“Express statement” means a written statement substantially similar to the following: This information is voluntarily submitted to a public office in expectation of protection from disclosure as provided by section 149.433 of the Revised Code.

“Infrastructure record” means any record that discloses the configuration of critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building.

“Infrastructure record” includes a risk assessment of infrastructure performed by a state or local law enforcement agency at the request of a property owner or manager.

“Infrastructure record” does not mean a simple floor plan that discloses only the spatial relationship of components of the building.

“Security record” means any of the following:

(1) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(2) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:

(a) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;

(b) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

(c) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

(3) An emergency management plan adopted pursuant to section 3313.536 of the Revised Code.

**(B)**

(1) A record kept by a public office that is a security record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(2) A record kept by a public office that is an infrastructure record of a public office, public school, or a chartered nonpublic school is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

**(3)** A record kept by a public office that is an infrastructure record of a private entity may be exempted from release or disclosure under division (C) of this section.

**(C)** A record prepared by, submitted to, or kept by a public office that is an infrastructure record of a private entity, which is submitted to the public office for use by the public office, when accompanied by an express statement, is exempt from release or disclosure under section 149.43 of the Revised Code for a period of twenty-five years after its creation if it is retained by the public office for that length of time.

**(D)** Notwithstanding any other section of the Revised Code, disclosure by a public office, public employee, chartered nonpublic school, or chartered nonpublic school employee of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project or chartered nonpublic school does not constitute public disclosure for purposes of waiving division (B) of this section and does not result in that record becoming a public record for purposes of section 149.43 of the Revised Code.

## History

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149 v S 184. Eff 5-15-2002; 151 v H 422, § 1, eff. 9-28-06; 2014 HB 487, § 1, eff. Sept. 17, 2014; 2016 sb321, § 1, effective September 28, 2016; 2018 hb425, § 1, effective April 8, 2019.

Page's Ohio Revised Code Annotated

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## ORC Ann. 2901.01

Current with Legislation passed by the 133rd General Assembly and filed with the Secretary of State through file 30.

***Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure (Chs. 2901 — 2981) > Chapter 2901: General Provisions (§§ 2901.01 — 2901.45) > In General (§§ 2901.01 — 2901.10)***

### **§ 2901.01 Definitions.**

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**(A)As used in the Revised Code:**

- (1)**“Force” means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.
- (2)**“Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.
- (3)**“Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.
- (4)**“Physical harm to property” means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. “Physical harm to property” does not include wear and tear occasioned by normal use.
- (5)**“Serious physical harm to persons” means any of the following:
  - (a)**Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
  - (b)**Any physical harm that carries a substantial risk of death;
  - (c)**Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
  - (d)**Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
  - (e)**Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.
- (6)**“Serious physical harm to property” means any physical harm to property that does either of the following:
  - (a)**Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;
  - (b)**Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.
- (7)**“Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.
- (8)**“Substantial risk” means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.
- (9)**“Offense of violence” means any of the following:
  - (a)**A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03,

2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of section 2903.34, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

- (b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;
- (c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;
- (d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section.

**(10)**

(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

**(11)** "Law enforcement officer" means any of the following:

- (a) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;
- (b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;
- (c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;
- (d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;
- (e) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;
- (f) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;
- (g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
- (h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

- (i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;
- (j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;
- (k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;
- (l) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house of representatives sergeant at arms;
- (m) The senate sergeant at arms and an assistant senate sergeant at arms;
- (n) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

- (a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;
- (b) Any unlawful gambling device or paraphernalia;
- (c) Any dangerous ordnance or obscene material.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(B)

(1)

- (a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:
  - (i) An individual, corporation, business trust, estate, trust, partnership, and association;
  - (ii) An unborn human who is viable.
- (b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.
- (c) As used in division (B)(1)(a) of this section:
  - (i) "Unborn human" means an individual organism of the species *Homo sapiens* from fertilization until live birth.
  - (ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

- (i) Her delivery of a stillborn baby;
- (ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;
- (iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
- (iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;
- (v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX of the Revised Code:

- (1) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.
- (2) "School," "school building," and "school premises" have the same meanings as in section 2925.01 of the Revised Code.
- (3) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Chapter 3314. of the Revised Code; a governing board of an educational service center, or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code.
- (4) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

## History

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142 v H 708 (Eff 4-19-88); 143 v S 24 (Eff 7-24-90); 144 v H 77 (Eff 9-17-91); 144 v S 144 (Eff 8-8-91); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v S 239 (Eff 9-6-96); 146 v S 277 (Eff 3-31-97); 147 v H 565 (Eff 3-30-99); 148 v S 1 (Eff 8-6-99); 148 v H 162 (Eff 8-25-99); 148 v S 107 (Eff 3-23-2000); 148 v S 137 (Eff 5-17-2000); 148 v H 351 (Eff 8-18-2000); 148 v S 317 (Eff 3-22-2001); 149 v S 184 (Eff 5-15-2002); 149 v H 675 (Eff 3-14-2003); 149 v H 545 (Eff 3-19-2003); 149 v H 364. Eff 4-8-2003; 151 v H 241, § 1, eff. 7-1-07; 153 v S 235, § 1, eff. 3-24-11; 2011 HB 153, §

101.01, eff. Sept. 29, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2016 sb227, § 1, effective April 6, 2017; 2018 sb145, § 1, effective March 22, 2019.

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## ORC Ann. 2909.21

Current with Legislation passed by the 133rd General Assembly and filed with the Secretary of State through file 30.

***Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure (Chs. 2901 — 2981) > Chapter 2909: Arson and Related Offenses (§§ 2909.01 — 2909.34) > Terrorism (§§ 2909.21 — 2909.34)***

### **§ 2909.21 Definitions.**

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As used in sections 2909.21 to 2909.31 of the Revised Code:

**(A)**“Act of terrorism” means an act that is committed within or outside the territorial jurisdiction of this state or the United States, that constitutes a specified offense if committed in this state or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one or more of the following:

- (1)**Intimidate or coerce a civilian population;
- (2)**Influence the policy of any government by intimidation or coercion;
- (3)**Affect the conduct of any government by the act that constitutes the offense.

**(B)**“Biological agent,” “delivery system,” “toxin,” and “vector” have the same meanings as in section 2917.33 of the Revised Code.

**(C)**“Biological weapon” means any biological agent, toxin, vector, or delivery system or combination of any biological agent or agents, any toxin or toxins, any vector or vectors, and any delivery system or systems.

**(D)**“Chemical weapon” means any one or more of the following:

**(1)**Any toxic chemical or precursor of a toxic chemical that is listed in Schedule 1, Schedule 2, or Schedule 3 of the international “Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC),” as entered into force on April 29, 1997;

**(2)**A device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or precursor identified in division (D)(1) of this section that would be created or released as a result of the employment of that device;

**(3)**Any equipment specifically designed for use directly in connection with the employment of devices identified in division (D)(2) of this section.

**(E)**“Radiological or nuclear weapon” means any device that is designed to create or release radiation or radioactivity at a level that is dangerous to human life or in order to cause serious physical harm to persons as a result of the radiation or radioactivity created or released.

**(F)**“Explosive device” has the same meaning as in section 2923.11 of the Revised Code.

**(G)**“Key component of a binary or multicomponent chemical system” means the precursor that plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent chemical system.

**(H)**“Material support or resources” means currency, payment instruments, other financial securities, funds, transfer of funds, financial services, communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

**(I)**“Payment instrument” means a check, draft, money order, traveler’s check, cashier’s check, teller’s check, or other instrument or order for the transmission or payment of money, regardless of whether the item in question is negotiable.

**(J)**“Peace officer” and “prosecutor” have the same meanings as in section 2935.01 of the Revised Code.

**(K)**“Precursor” means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system.

**(L)**“Response costs” means all costs a political subdivision incurs as a result of, or in making any response to, a threat of a specified offense made as described in section 2909.23 of the Revised Code or a specified offense committed as described in section 2909.24 of the Revised Code, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the political subdivision and all costs so incurred by the political subdivision that relate to laboratory testing or hazardous material cleanup.

**(M)**“Specified offense” means any of the following:

(1)A felony offense of violence, a violation of section 2909.04, 2909.081, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, or 2927.24 of the Revised Code, a felony of the first degree that is not a violation of any provision in Chapter 2925. or 3719. of the Revised Code;

(2)An attempt to commit, complicity in committing, or a conspiracy to commit an offense listed in division (M)(1) of this section.

**(N)**“Toxic chemical” means any chemical that through its chemical action on life processes can cause death or serious physical harm to persons or animals, regardless of its origin or of its method of production and regardless of whether it is produced in facilities, in munitions, or elsewhere.

**(O)**“Hazardous radioactive substance” means any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life.

## History

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149 v S 184. Eff 5-15-2002; 151 v S 9, § 1, eff. 4-14-06; 151 v H 231, § 1, eff. 7-20-06; 2012 HB 487, § 101.01, eff. Sept. 10, 2012.

## **OAC Ann. 5120-9-49**

This document is current through updates effective May 7, 2020.

**OHIO ADMINISTRATIVE CODE > 5120 Department of Rehabilitation and Corrections - Administration and Director > Chapter 5120-9 Use of Force; Institutional Rules**

### **5120-9-49. Public records.**

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**(A)** A “record” means any item that is kept by the department of rehabilitation and correction (department) that: (1) is stored on a fixed medium, (2) is created, received, or sent under the jurisdiction of a public office and (3) documents the organization, functions, policies, decisions, procedures, operations, or other activities of the department. “Public record” means records kept by the department unless exempted by any provision of the Ohio Revised Code or other binding legal authorities. The records of the department that shall be deemed public records include, but are not limited to, the following:

- (1)** Rules of general applicability and procedure (i.e., rules of the Ohio Administrative Code) and statements of general policy (i.e., department policies exclusive of security).
- (2)** Charges and decisions in inmate disciplinary cases.
- (3)** Non-security related manuals and instructions.
- (4)** Determinations, orders and minutes made by the adult parole authority, including the parole board, resulting from any hearing required by law or Chapter 5120:1-1 of the Administrative Code.

**(B)** The following documents are not public records:

- (1)** Records, the release of which is prohibited by state law (e.g., all records referred to in section 5120.21 of the Revised Code, attorney-client privilege, attorney work product, and trade secrets) or federal law. See division (A)(1)(v) of section 149.43 of the Revised Code.
- (2)** Medical records that pertain to the medical history, diagnosis, prognosis, or medical condition of an inmate and that is generated and maintained in the process of medical treatment. “Medical records” does not include any document relating to birth, deaths, and the fact of admission to or discharge from a hospital. See divisions (A)(1)(a) and (A)(3) of section 149.43 of the Revised Code. However, pursuant to division (C) of section 5120.21 of the Revised Code, inmate medical and mental health records may be released, once every twelve months, if the inmate or former inmate to whom the record pertains, signs a written request designating a licensed attorney or licensed physician to receive the records and the designee signs on letterhead a request for the records. The executor or designated administrator of a deceased inmate’s estate may request that inmate’s medical records along with a designated attorney or physician.
- (3)** Recovery services files and information that would identify an offender or employee receiving alcohol and/or drug treatment. See section 5119.27 of the Revised Code.
- (4)** Information provided to the office of victim services by a victim of crime or a victim representative designated under section 2930.02 of the Revised Code for the purpose of program participation, of receiving services, or to communicate acts of an inmate or person under the supervision of the adult parole authority that threaten the safety and security of the victim. See section 5120.60 of the Revised Code.
- (5)** Residential and familial information of parole officers and correctional employees. See division (A)(7) of section 149.43 of the Revised Code.
  - (a)** Under this rule, “correctional employee” means any department employee who in the course of performing job duties has or has had contact with inmates or persons under supervision. Under this rule,

“residential and familial information” means any information that discloses any of the following about a correctional employee or a parole officer:

- (i) Residential street address (the state and political subdivision are a public record).
- (ii) Information that is compiled from referral to or participation in an employee assistance program.
- (iii) Social security number.
- (iv) Residential and emergency telephone numbers.
- (v) Numbers of bank accounts (e.g., direct deposits) and debit, charge, and credit cards.
- (vi) Medical information.
- (vii) The name of any beneficiary of employment benefits (e.g., life insurance).
- (viii) The identity and amount of any charitable or employment benefit deduction (e.g., insurance for health, dental, vision, life, and disability, union dues, and leave donation).
- (ix) Name, residential address, employer name and address, social security number, residential or emergency telephone numbers, numbers of bank accounts and debit, charge, and credit cards of the spouse, former spouse, or children.

(b) A journalist may obtain the residential street address of a correctional employee or parole officer, as well as the name and address of that person’s spouse, former spouse, or children, if employed by a public office. See division (B)(9) of section 149.43 of the Revised Code. To obtain this information, the journalist must submit a written request, which includes the journalist’s name and title, the employer’s name and address, and a statement that release of the information is in the public interest.

(c) For a department employee that does not meet the definitions of correctional employee or parole officer, their home address may not be a public record. The analysis is whether the address is a “record,” in that it documents the organization, functions, policies, decisions, procedures, operations, or other activities of the department. For example, if a department employee is required to live in a certain area as a condition of employment, the portion of the home address that documents compliance with that condition is a record. If the address is kept by the department for administrative convenience, it is not a record.

(6) Infrastructure records. An “infrastructure record” means any record that discloses the configuration of the department’s critical systems, such as its communications, computer, electrical, mechanical, ventilation, water, plumbing, or security systems. Infrastructure records may be disclosed for purposes of construction, renovation, or remodeling of the department’s institutions and facilities without waiving the non-public status of that record. Simple floor plans or records showing the spatial relationship components of the public office are not infrastructure records. See section 149.433 of the Revised Code. However, pursuant to section 5120.21 of the Revised Code, architectural, engineering, or construction diagrams, drawings, or plans of a correctional institution are not public records.

(7) Security records. A “security record” means any record that contains information directly used for protecting or maintaining the security of the department against attack, interference, sabotage, or to prevent, mitigate, or respond to acts of terrorism. Security records may be disclosed for purposes of construction, renovation, or remodeling of the department’s institutions and facilities without waiving the non-public status of that record. See section 149.433 of the Revised Code.

(8) Criminal history “rap sheets” obtained from the federal national crime information center system or through the state law enforcement automated data system. Also, records from the bureau of criminal identification and investigation. See section 3789(g) of 42 U.S.C. as amended January 5, 2006 and section 109.57 of the Revised Code.

(9) Federal, state, and municipal income tax returns and social security numbers contained in personnel files. See section 6103 of 26 U.S.C. as amended July 2, 2010 and sections 5703.21 and 718.13 of the Revised Code.

(10) Public employee retirement system personal history information. See section 3307.20 of the Revised Code.

**(11)**Records of open internal equal employment opportunity investigations are confidential law enforcement investigatory records under division (A) (1) (h) of section 149.43 of the Revised Code, if conducted pursuant to Chapter 123:1-49 of the Administrative Code.

**(12)**Information contained in a certain employment record if the department employee whose information is recorded therein can demonstrate a high potential for victimization or a substantial risk of bodily harm or death from the release of such record.

**(13)**Pursuant to division (A)(2) of section 149.43 of the Revised Code, confidential law enforcement investigatory records pertaining to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature to the extent that the release of the record would create a high probability of disclosure of any of the following:

**(a)**The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised.

**(b)**Specific confidential investigation techniques or procedures or specific investigatory work product.

**(c)**Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

**(d)**Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity.

**(14)**Personal information listed online (i.e., numbers for federal tax identification, social security, driver's license, state identification, and accounts for checking, savings, and credit cards) must be redacted upon a person's request pursuant to section 149.45 of the Revised Code.

**(15)**Records maintained by the department of youth services pertaining to children in its custody, that are released to the department for the limited purpose of carrying out the duties of the department. See division (A)(1)(l) of section 149.43 and section 5139.05 of the Revised Code.

**(16)**Reports of a pre-sentence investigation and an offender background investigation. The department may disclose, in a confidential manner, any such report to courts, law enforcement agencies, community-based correctional facilities, halfway houses, and medical, mental health, and substance abuse providers. Prior to such disclosure, the department shall redact the victim impact section and any information identifying a witness. See section 2951.03 of the Revised Code.

**(17)**Education records without student consent. School transcripts, attendance records, or other individually identifiable student records. See section 3319.321 of the Revised Code.

**(18)**Certain records that identify an inmate or former inmate concerning transfer of mentally ill or mentally retarded inmates from a department correctional institution to a psychiatric hospital. See section 5120.17 of the Revised Code.

**(19)**Department quality assurance records. See section 5120.211 of the Revised Code.

**(20)**Inmate records released by the department to the department of youth services or a court pursuant to division (E) of section 5120.21 of the Revised Code. See division (A)(1)(k) of section 149.43 of the Revised Code.

**(C)**Upon request from a representative of an approved news media organization or a private citizen, the following non-public information about an inmate, parolee, probationer or other releasee may be made available upon the prior approval from the department's bureau of communication or from the appropriate managing officer:

**(1)**Name and number.

**(2)**Age and date of birth.

**(3)**Race and sex.

**(4)**Physical description.

**(5)**Admission date.

- (6) Sentencing entry.
- (7) Prison transfers (i.e., dates and locations only).
- (8) Outside court actions regarding confinement and release.
- (9) Institutional work assignments.
- (10) Security level.
- (11) Prior department incarceration.
- (12) Release eligibility and supervision history (i.e., date and type).
- (13) Time at large (i.e., absconded or escaped).
- (14) Death. The identity of a deceased inmate shall be withheld until next-of-kin have been notified or twenty-four hours following death, whichever occurs first.

(D) Rule 5120:1-1-36 of the Administrative Code lists certain non-public parole board records which may be disclosed, according to the procedures established in that rule, to the following representatives:

- (1) Approved news media organizations.
- (2) Government officials.
- (3) Victims of any offense of commitment or a subsequent parole violation.
- (4) An attorney designated by the victim or the inmate.

(E) The department must organize and maintain its records so that they can be made available in response to public requests. On receiving a public records request for specific, existing records, the department must provide prompt inspection at no cost during regular business hours, or provide copies at actual cost within a reasonable period of time, if requested. The department may withhold or redact specific records which are covered by an exception to the Public Records Act, but is required to give the requester an explanation and legal authority. If a requester makes an ambiguous or overly broad request, or the department believes that asking for, but not requiring, the request in writing, or for the requester's identity, or for the intended use of the requested information would benefit the requester by enhancing the ability of the department to provide the records, the Public Records Act provides for negotiation to help identify, locate, and deliver the requested records. In addition to denials justified by exceptions to the Public Records Act, the department may deny a request in the extreme circumstance where compliance would unreasonably interfere with the discharge of the department's duties.

(F) Non-public records of the department may, in the sole discretion of the director, or designee, be made available to counsel of record of an inmate or releasee, researchers, law enforcement agencies, or other persons with a need for access to such documents, subject to other restrictions on such access as may be provided by law.

## **Statutory Authority**

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**Effective:**

01/25/2016.

**Five Year Review (FYR) Dates:**

09/21/2015 and 01/12/2021.

**Promulgated Under:**

111.15.

**Statutory Authority:**

5120.01.

**Rule Amplifies:**

149.43, 5120.21, 5120.60, 149.433, 109.57, 2930.02, 3307.20, 3793.13, 5703.21, 718.13, 149.45, 5139.05, 2951.03, 5120.17, 3319.321, 5120.211

**Prior Effective Dates:**

8/1/80; 10/15/75; 11/17/97; 4/1/05, 9/15/10.

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